

## Food and Nutrition Service, USDA

## § 250.46

State agency's quarterly estimate of need.

(c) *Types of donated foods authorized for donation.* State agencies distributing donated foods through the Commodity Supplemental Food Program are eligible to receive such foods under section 32, section 416, section 709 and section 4(a).

### § 250.46 Food Distribution Program in the Trust Territory of the Pacific Islands.

(a) *Distribution.* The distributing agency shall make donated foods available for distribution to households in the Trust Territory of the Pacific Islands by those welfare agencies which certify households in accordance with a plan of operation approved by FNS, as required by paragraph (d) of this section. Distribution of donated foods to households shall be made in accordance with the approved plan of operation.

(b) *Quantities and value of donated foods.* Distribution of donated foods shall be based on the actual number of households in need of food assistance.

(c) *Types of donated foods authorized for donation.* Agencies which make distribution to needy persons are eligible to receive foods under section 416, section 32, section 709 and section 4(a).

(d) *Plan of operation.* Prior to making distribution to agencies or households, the distributing agency shall submit a plan of operation for approval by the appropriate FNSRO. Such plans shall incorporate the procedures and methods to be used in certifying households in need of food assistance, in making distribution to households, and in providing a fair hearing to households whose claims for food assistance under the plan are denied or are not acted upon with reasonable promptness, or who are aggrieved by an agency's interpretation of any provision of the plan. No amendment to the plan of operation of the distributing agency shall be made without prior approval of FNS, and FNS may require amendment of any plan as a condition of continuing approval. The distributing agency shall require welfare agencies making distribution to households to conduct distribution programs in accordance with all provisions of the plan of operation.

At a minimum, the plan shall include the following:

(1) The name of the public welfare agency or agencies which will be responsible for certification of households;

(2) The manner in which donated food will be distributed, including, but not limited to, the identity of the agency that will distribute donated foods, the storage and distribution facilities to be used and the method of financing;

(3) *The specific criteria to be used in certifying households as in need of food assistance.* The income and resource standards established by the distributing agency for use by welfare agencies in determining the eligibility of applicant households, after October 1979, shall continue to be those standards used as of that date which were incorporated in a plan of operation approved by FNS, unless an amendment to such standard is required or approved by FNS;

(4) The method or methods that will be used to verify the information upon which the certification of eligibility is based, including the kinds of documentary evidence that applicants are required to furnish to obtain certification;

(5) Provisions for periodically reviewing the certifications of households to discover any change in their status which would necessitate a change in the determination of eligibility. The eligibility of households shall be reviewed at least every three months, except that such reviews may be made at longer periods, not to exceed 12 months, provided that such longer periods are based upon a determination by the certifying agency that the income and resources available to such households will probably remain essentially unchanged during such period;

(6) Provisions for identifying each person who has been designated to receive donated foods for a household;

(7) Assurance that the distribution of donated foods shall not be used as a means to further the political interest of any individual or party, and that there shall be no discrimination against recipients of donated foods because of race, color, national origin, sex, age or handicap;

(8) Assurance that:

(i) Citizenship or durational residence requirements shall not be imposed as a condition of eligibility and

(ii) Recipients shall not be required to make any payments in money, materials or services, for or in connection with the receipt of donated foods, and that they shall not be solicited in connection with the receipt of donated foods for voluntary cash contributions for any purpose;

(9) The manner in which the distributing agency plans to supervise the program; and

(10) Definitions of any terms used which cannot be determined by reference to Webster's New International Dictionary (third edition).

(e) *Operating expense funds*—(1) *Application for funds.* To receive administrative funds, the distributing agency shall submit Form AD-623, "Application for Federal Assistance," to the appropriate FNSRO at least three months prior to the beginning of the Federal fiscal year. Approval of the application by FNS shall be a prerequisite to payment of any funds to the distributing agency. The Department will make payments to the distributing agency to assist it in meeting operating expenses incurred in administering food distribution for needy persons.

(2) *Availability of funds.* FNS will review and evaluate the budget information submitted by the distributing agency in relationship to the distributing agency's plan of operation and any other factors which may be relevant to FNS' determination as to whether the estimated expenditures are reasonable and justified. FNS will give written notification to the distributing agency of:

(i) Its approval or disapproval of any or all of the estimated expenditures; and

(ii) The amount of funds which will be made available.

(3) *Payment of funds.* Payments shall be made to the distributing agency through a Letter of Credit or an advance by Treasury Check. These payments will be issued in accordance with Treasury Department procedures, Treasury Circular No. 1075 and through the appropriate Treasury Regional Disbursing Office (RDO).

(4) *Use of funds.* The distributing agency shall make every reasonable effort to ensure the availability of a food distribution program for needy persons in households and shall assign priority in the use of any funds received under this Section to accomplish that objective. Any remaining funds shall be used to expand and improve distribution to needy households. Such funds may be used for any costs which are not disallowed under Office of Management and Budget Circular A-87 (a copy of which may be obtained from FNS) and which are incurred in distributing donated foods to households, including determining eligibility of recipients, except for the purchase cost of land and buildings. In no event shall such funds be used to pay any portion of any expenses if reimbursement or payment therefore is claimed or made available from any other Federal source.

(5) *Accounting for funds.* The distributing agency which receives administrative funds under this Section shall establish and maintain an effective system of fiscal control and accounting procedures. The accounting procedures maintained by the distributing agency shall be such as to accurately reflect the receipt, expenditure and current balance of funds provided by FNS. The accounting procedures shall also provide for segregation of costs specifically identifiable to the Food Distribution Program from any other costs incurred by the distributing agency. Any budget revisions by the distributing agency which require the transfer of funds from an FNS approved cost category to another shall be in accordance with the budget revision procedures set forth in 7 CFR part 3015 and shall be approved by FNS prior to any transfer of funds.

(6) *Return, reduction and reallocation of funds.* (i) FNS may require the distributing agency to return prior to the end of the Federal fiscal year any or all unobligated funds received under this section, and may reduce the amount it has apportioned or agreed to pay to the distributing agency if FNS determines that:

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(A) The distributing agency is not administering the Food Distribution Program in accordance with its plan of operation approved by FNS and the provisions of this part;

(B) The amount of funds which the distributing agency requested from FNS is in excess of actual need, based on reports of expenditures and current projections of program needs; or

(C) Circumstances or conditions justify the return, reallocation or transfer of funds to accomplish the purposes of this part.

(ii) The distributing agency shall return to FNS within 90 days following the close of each Federal fiscal year any funds received under paragraph (e) of this section which are obligated at that time.

(7) *Financial reports.* The distributing agency shall submit quarterly and annual reports to FNS on Form SF-269 concerning the obligations, expenditure and status of funds received under this Section. In addition, the distributing agency receiving funds under paragraph (e) of this section shall submit any other reports in such form as may be required from time to time by the Department.

(f) *Records, reports and audits.* The distributing agency shall:

(1) Maintain and retain for three years from the close of the Federal fiscal year to which they pertain, complete and accurate records of all amounts received and disbursed under paragraph (e) of this section,

(2) Keep such accounts and records as may be necessary to enable FNS to determine whether there has been compliance with this section, and

(3) Permit representatives of the Department and of a General Accounting Office of the United States to inspect, audit and copy such records and accounts at any reasonable time.

### § 250.47 Food Distribution Program on Indian reservations.

(a) *Distribution.* Distributing agencies which operate a food distribution program on Indian reservations shall comply with the provisions set forth in §§ 250.1, 250.2, 250.3, 250.10, 250.11, 250.12, 250.13 (with the exception of paragraph (d)(2)), § 250.14, §§ 250.15 and 250.17(d) to the extent that these provisions are

not inconsistent with the regulations cited in paragraph (b) of this section.

(b) In addition to complying with the provisions identified in paragraph (a) of this section, distributing agencies shall also comply with the provisions set forth in part 253, Food Distribution Program on Indian Reservations or part 254, Food Distribution Program in Oklahoma, as applicable.

[53 FR 20426, June 3, 1988, as amended at 53 FR 27476, July 21, 1988]

### § 250.48 School food authorities and commodity schools.

(a) *Distribution.* (1) School food authorities which participate in the National School Lunch Program or as commodity schools under part 210 of this chapter or the School Breakfast Program under part 220 of this chapter are eligible to receive donated foods. The distributing agency shall distribute donated foods only to those school food authorities whose eligibility for participation in the program has been confirmed in writing by the State agency or FNSRO administering the applicable program. Lists of participating school food authorities which have been provided to the distributing agency by the administering State agency or FNSRO may serve as written confirmation of eligibility. School food authorities may employ food service management companies to conduct food service operations in accordance with § 250.12(d) and parts 210 and 220 of this chapter.

(2) School food authorities which do not participate in the National School Lunch Program or as commodity schools under part 210 of this chapter or in the School Breakfast Program under part 220 of this chapter may receive such commodities as the Secretary may designate, provided the schools are public schools or private schools determined by the Internal Revenue Service to be exempt from income tax under section 501(c)(3) of the Internal Revenue Code of 1954 or, in the Commonwealth of Puerto Rico, certified as nonprofit by the Governor; and operate a nonprofit school food service. Such schools shall be eligible to receive only those commodities acquired under section 416 of the Agricultural Act of 1949 (7 U.S.C. 1431) to the